

REMARKS

In the September 4, 2009 Office Action, all of claims 1, 2, 4 and 9-18 stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the September 4, 2009 Office Action, Applicants have amended claims 2 and 13-15 as indicated above. Claims 3, 5-8 and 19-38 are withdrawn from further consideration as being drawn to non-elected Species. Thus, claims 2-38 are pending, with claims 2 and 3 now being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

Double Patenting

In paragraph 3 of the Office Action, claims 1 and 2 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 7,395,677. In response, Applicants have cancelled claim 1 and amended now independent claim 2 to require "a heat source side refrigerant circuit including a compression mechanism and a heat source side heat exchanger, only the compression mechanism of the compression mechanism and the heat source side heat exchanger being used in common with the first and second utilization side refrigerant circuits". However, U.S. Patent No. 7,395,677 (hereinafter "the '677 patent") does not disclose or suggest such an arrangement. Thus, even if the structure of the '677 patent was modified to configure the circuits in parallel as asserted on page 4 of the Office Action, the arrangement of independent claim 2 as now amended would not result. Accordingly, withdrawal of this rejection is respectfully requested.

Rejections - 35 U.S.C. § 102

In paragraph 5 of the Office Action, claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,793,143 (Rhodes). In response, Applicants have cancelled independent claim 1. Thus, this rejection is now believed to be moot.

Rejections - 35 U.S.C. § 103

In paragraphs 6-13 of the Office Action, claims 2, 4 and 9-18 stand rejected under 35 U.S.C. §103(a) as follows:

- (A) Claims 2, 4, 12 and 13 stand rejected as being unpatentable (obvious) over the Rhodes '143 patent;
- (B) Claims 9-11 stand rejected as being unpatentable (obvious) over the Rhodes '143 patent in view of U.S. Patent No. 4,984,433 to Worthington;
- (C) Claim 14 stands rejected as being unpatentable (obvious) over the Rhodes '143 patent in view of U.S. Patent No. 6,205,797 to Maeda and U.S. Patent No. 6,050,100 to Belding;
- (D) Claim 15 stands rejected as being unpatentable (obvious) over the Rhodes '143 patent in view of U.S. Patent No. 6,205,797 to Maeda;
- (E) Claims 16-17 stand rejected as being unpatentable (obvious) over the Rhodes '143 patent in view of U.S. Patent No. 5,547,018 to Takahashi et al.; and
- (F) Claim 18 stands rejected as being unpatentable (obvious) over the Rhodes '143 patent in view of U.S. Patent No. 5,590,831 to Manson et al.

In response, Applicants have amended independent claim 2 to place this claim in independent form, and to more clearly define the present invention over the prior art of record.

Specifically, independent claim 2 now requires, *inter alia*, “a heat source side refrigerant circuit including a compression mechanism and a heat source side heat exchanger, only the compression mechanism of the compression mechanism and the heat source side heat exchanger being used in common with the first and second utilization side refrigerant circuits.” Clearly this arrangement is **not** disclosed or suggested by the Rhodes patent, the Worthington patent, the Maeda patent, the Belding patent, the Takahashi et al. patent, and/or the Manson et al. patent, singularly or in combination. The claims rejected in rejections (B) – (F) all now depend from independent claim 2.

More specifically, with respect to rejection (A) the Office Action acknowledges that the Rhodes patent fails to explicitly teach a heat source side heat exchanger in the heat source side refrigerant circuit. However, the Office Action asserts that it is obvious to replace the accumulator (96) of the Rhodes patent with a heat exchanger in order to allegedly ensure that

mixed phase refrigerant is in the liquid phase before being sent to the inlet of the compressor.

However, if the accumulator (96) of the Rhodes patent is replaced with a heat exchanger, the heat exchanger would be used in common with the first and the second utilization side refrigerant circuits. Thus, if the accumulator (96) of the Rhodes patent is replaced with a heat exchanger as suggested in the Office Action, the arrangement of independent claim 2 as now amended would not result. Accordingly withdrawal of rejection (a) of claims 2, 4, 12 and 13 is respectfully requested.

The remaining references cited in rejections (B) – (F) do not account for the deficiencies of the Rhodes patent with respect to independent claim 2. In fact, as seen in the Office Action, these references are merely relied upon to allegedly disclose features of selected dependent claims. Thus, even if the references cited in rejections (B) – (F) were somehow combined with the Rhodes patent as asserted in the Office Action, “a heat source side refrigerant circuit including a compression mechanism and a heat source side heat exchanger, only the compression mechanism of the compression mechanism and the heat source side heat exchanger being used in common with the first and second utilization side refrigerant circuits” as now required by independent claim 2 would not result. Accordingly, withdrawal of rejections (B) – (F) is also respectfully requested.

Under U.S. patent law, the mere fact that the prior art can be modified does *not* make the modification obvious, unless an *apparent reason* exists based on evidence in the record or scientific reasoning for one of ordinary skill in the art to make the modification. See, KSR Int’l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007). The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some “apparent reason to combine the known elements in the fashion claimed.” Id. at 1741. In this case, the current record lacks any apparent reason, suggestion or expectation of success for combining the patents to create Applicants’ unique arrangement of independent claim 2, as now amended.

Prior Art Citation

In the Office Action, additional prior art references were made of record. Applicants believe that these references do not render the claimed invention obvious.

Appl. No. 10/591,060
Amendment dated November 25, 2009
Reply to Office Action of September 4, 2009

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In view of the foregoing amendment and comments, Applicants respectfully assert that claims 2, 4 and 9-18 are now in condition for allowance. Furthermore, Applicants respectfully request that withdrawn claims 3, 5-8 and 19-38 be rejoined if appropriate, upon allowance of a generic and/or linking claim or claims. In any case, reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

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